

City and County of San Francisco

OFFICE OF THE CITY ATTORNEY

Request for Qualifications

-for-

***457(b) DEFERRED COMPENSATION PLAN
LEGAL SERVICES***

Dated: August 23, 2012

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457(b) DEFERRED COMPENSATION PLAN LEGAL SERVICES

I. INTRODUCTION

The City and County of San Francisco ("the City"), through the Office of the City Attorney ("City Attorney's Office"), is issuing this Request for Qualifications ("RFQ") in search of qualified law firms ("Candidates") to provide legal services on an ongoing, as needed basis, to the San Francisco 457(b) Deferred Compensation Plan ("SFDCP").

The SFDCP is a voluntary deferred compensation 457(b) plan, established by City ordinance. The SFDCP is administered by a third party administrator, currently Great-West Retirement Services. The SFDCP is managed by the San Francisco Employees Retirement System Deferred Compensation Manager, and overseen by a seven member Board. The Board membership consists of three members elected from the employees and retirees, three mayoral appointees, and one member of the Board of Supervisors. The City Attorney's office acts as general counsel to the SFDCP and the Retirement Board.

As of May 31, 2012, the SFDCP had \$2.1 billion in assets. It offers an array of investment options, including target date funds and a self-directed brokerage option. In 2013, the SFDCP plans to offer a Roth option to its participants.

The successful Candidate(s) will satisfy the qualifications set forth in this RFQ and demonstrate expertise in the relevant areas. Whether a Candidate has such qualifications will be determined through the evaluation process described in Section IV(B) of this RFQ. Candidates chosen through this process ("Qualified Candidates") will be placed on a panel of law firms eligible to enter into a contract (the "Contract") to perform the work, project or services (the "Work") described in Section II of this RFQ. No Candidate shall have any legal or equitable right or obligation to enter into the Contract or to perform the Work as a result of being chosen as a Qualified Candidate. The City Attorney's Office reserves the right, at its sole discretion, to select outside legal counsel through alternative means or requests for qualifications.

II. SCOPE OF WORK

During the next three years, the City Attorney's Office seeks qualified counsel to assist with the following:

1. Advise the SFDCP on compliance with applicable laws, including tax laws, securities laws, and other laws relating to qualification issues that may affect the SFDCP design.
2. Recommend amendments to statutes, policies, and procedures to insure the SFDCP complies with applicable qualification criteria, rules and regulations.
3. Prepare and file requests for private letter rulings and other opinions from state and federal regulatory or governing bodies.
4. Advise the SFDCP concerning contracting matters, including but not limited to, contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
5. Negotiate draft and review contracts, including but not limited to, contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
6. Advise the SFDCP, and negotiate, draft and review investment contracts, including contracts for alternative investments.
7. Represent the SFDCP in complex litigation.

Candidates will be expected to familiarize themselves with the SFDCP, its policies, the fiduciary duties and responsibilities of staff and the Retirement Board, relevant ordinance provisions, and state law, without cost.

The above description of the Work is intended as a general guide and not as a complete description of all aspects of the Work or of all tasks necessary in order to complete the Work. There is no assurance that counsel will be required on all or any of these particular issues. Appropriate, qualified counsel will be selected for a matter as the need arises.

Selected Candidates will typically respond to work assignments from the City Attorney's Office. The City Attorney's Office will also provide technical assistance, act as liaison to SFDCP personnel, and monitor outside counsel for billing practices and responsiveness to SFDCP's needs.

III. REQUIRED COMPONENTS OF THE QUALIFICATIONS STATEMENT

To respond to this RFQ, a Candidate must submit a Statement of Candidate's Qualifications (a "Qualifications Statement") on or before the submissions deadline (the "Submissions Deadline") set forth in Section IV(C) of this RFQ. The Qualifications Statement must be signed by a person authorized to bind the Candidate to the representations, commitments and statements contained in the Qualifications Statement.

Selection of successful candidates will be based upon specific qualifications, experience and expertise demonstrated in the Qualifications Statement. Qualifications, experience and

expertise of key individuals, especially the lead attorney assigned to SFDCP-related matters, will have the greatest impact on the selection process. Please be as specific as possible. Proposals that merely provide generalities may be deemed non-responsive. Responses should include factual examples that demonstrate the expertise of the assigned staff and their individual value to SFDCP. Please note that written consent of the City Attorney's Office is required prior to the substitution of any personnel listed in the Candidate's Qualifications Statement.

In order to be considered as a Qualified Candidate, please provide the following requested information in the order indicated:

1. Background

- A one page introduction and executive summary of the Qualifications Statement.
- The name, address, telephone number, email address, and facsimile number of the person authorized to represent the Candidate with respect to all notices, negotiations, discussions and other communications relating to this RFQ, to any further selection process, and to any negotiations relating to a contract for the Work.
- A brief description of your firm, including its history, when the firm's investment law practice began, the location of the firm's offices, the number of attorneys specializing in deferred compensation law, and the number of attorneys in California.

2. Ownership/Affiliations

- Describe the firm's ownership structure, and identify and describe any parent or affiliated companies and/or joint ventures.

3. Staff

- Identify the attorneys who will be directly assigned to matters within the Scope of Work, their responsibilities for handling this relationship, their experience and qualifications, and the number of years they have practiced deferred compensation law, including 457(b) plan law. Include brief resumes.

4. Qualifications

- Describe your firm's expertise working with public deferred compensation plans, including 457(b) plans. Include range of responsibilities.
- Describe your firm's knowledge of City and County of San Francisco laws and applicable open meeting and open records laws.
- Briefly and specifically describe your firm's experience and qualification to provide the Work described above, including recent instances in which you have

represented in these matters deferred compensation plans of a size comparable to, or larger than, the SFDCP. With respect to these engagements, please describe your firm's specific role in performing the Work, the name of the client, number of years serving this client, and the names of the attorneys in charge of this client.

5. Fees

- Provide a fee proposal for the services identified in this RFQ, including hourly rates of the attorneys assigned, any alternative billing arrangements you may wish to propose, and state whether this proposal is negotiable. Please be as specific and creative as possible. State whether the firm offers discounted rates for governmental entities.
- Describe how your firm will help SFDCP to control its legal costs.

6. References

- Provide three current deferred compensation plan client references, similar to SFDCP in size, for whom you provide legal services, including client name, contact and telephone number and email address. 457(b) plan references are preferred.

7. Conflicts of Interest

- Does your firm have a written conflict of interest policy?
- Describe how your firm deals with professional ethics in connection with its representation of clients. What does the firm do to insure there are no conflicts of interest? What process does the firm maintain in order to provide a consistent, high standard of professional ethics?
- Describe any actual or potential conflict of interest that may arise as a result of your selection to represent the City Attorney's Office in SFDCP-related matters. Describe in detail the nature of the conflict and what consent would be required under the Rules of Professional Responsibility.
- Has your firm ever represented firms with which SFDCP might contract? If so, identify the name of each such client and the period of representation.
- Will the attorneys assigned to the SFDCP relationship agree to file annual Form 700?

8. Litigation or Claims

- Describe all actual or pending litigation, administrative proceedings, investigations, grand jury inquiries, indictments, convictions, and state ethics board proceedings in the last ten years relating to the firm, or any attorney or employee with the firm that arises from the firm's business, including the

outcome. Describe all pending or threatened investigations by a federal, state or local agency.

- Describe in detail all malpractice and fee dispute claims made against your firm in the last five years, including disposition or current status.
- Identify every instance within the last five years in which your firm was dismissed as legal counsel with respect to its representation similar to that called for in this RFQ.

9. Miscellaneous

- Provide the limits of your firm's malpractice insurance coverage, including insurance carriers. Identify whether the coverage is on a per client basis, or whether the dollar figure is applied to the firm as a whole. Identify all deductibles or self-insured retentions.
- Acknowledge that, by responding to this RFQ, the Candidate law firm and its attorneys and staff are "restricted sources" as that term is defined under the San Francisco's Campaign and Government Conduct Code.
- Acknowledge that, by responding to this RFQ, the Candidate law firm has reviewed the form services contract attached to this RFQ. Identify any provisions to which your firm will not agree.
- Discuss any additional information that you would like us to know about your firm that may impact our consideration of your firm as a potential legal service provider to the City Attorney's Office or to SFDCP.

IV. SUBMISSION AND SELECTION PROCESS

A. Time and Place for Submission of Qualifications Statements.

Each Candidate shall submit **THREE (3)** copies of its Qualifications Statement in a sealed envelope, clearly marked and separately bound, with two copies going to the City Attorney's Office and one copy going to SFDCP at the addresses provided in this Section IV in addition, Candidates must provide their Qualifications Statement in .PDF format to both the City Attorney's Office and to SFDCP at the email addresses provided in this Section IV. Qualifications Statements must be clearly marked, "Qualifications Statement for 457(b) Deferred Compensation Legal Services" Qualifications Statements must be *received* no later than 5:00 p.m., on **Friday, October 26, 2012**. Qualifications Statements may be delivered in person or sent via courier or U.S. mail to:

Caryn Bortnick
Deputy City Attorney
Office of the City Attorney
1390 Market Street, Fifth Floor
San Francisco, CA 94102

Tel: (415) 554-3849
Fax: (415) 554-4214
Email: caryn.bortnick@sfgov.org

Carol A. Cypert
San Francisco Deferred
Compensation Plan
Manager
30 Van Ness Avenue, Suite 3900
San Francisco, CA 94102

Tel: (415) 487-7012
Fax: (415) 581-2395
Email: carol.cypert@sfgov.org

Other means of transmission (including facsimile) will not be accepted.

B. Evaluation Process.

The City Attorney's Office and SFDCP will evaluate each Candidate's Qualifications Statement. Any Qualifications Statement that does not detail each of the issues and qualifications raised in Section III will, at the discretion of the City Attorney's Office, be considered non-responsive and will preclude the Candidate from further consideration. In addition, no lead attorney will be assigned to SFDCP matters without at least 5 years of relevant experience. Any Qualifications Statement that does not demonstrate that the firm's lead attorney meets this minimum requirement by the deadline for submissions will be considered non-responsive and will not be eligible for award of a contract. At any time during the evaluation process, the City may require a Candidate or Candidates to present oral or written clarification of its Qualifications Statement.

Set forth below are the guidelines that will be used in analyzing and evaluating responses to this RFQ. In an effort to reach a decision concerning the best qualified firms, the City Attorney's Office reserves the right to evaluate, at its sole discretion, all factors it deems appropriate, whether or not such factors have been stated in this RFQ. The City Attorney's Office anticipates that it will evaluate Qualifications Statements and oral presentations, when requested, based on the criteria below. In addition to the minimum required experience for the lead attorney assigned to SFDCP matters, the City Attorney's Office anticipates that firms that demonstrate specific 457(b) plan experience on projects similar to the Work will be qualified for the panel of firms that will be eligible to enter into a contract to perform the Work.

1. Firm Experience

- (i) Specific experience providing legal services similar to the Work to deferred compensation plans of comparable size.
- (ii) Quality of recently completed projects similar to the Work.
- (iii) Relevant experience of lead counsel.

- (iv) Quality of responses to additional qualifications regarding the Work.

2. Assigned Staff

- (i) Experience in providing the Work, above, to deferred compensation plans of similar size.
- (ii) Professional and educational qualifications.
- (iii) Results of reference checks.
- (iv) Indicated availability to SFDCP on short notice.

3. Demonstrated Professionalism

- (i) Responsiveness to City requirements.
- (ii) Written and oral communication skills.
- (iii) Professionalism and quality of submitted Qualifications Statement.

4. Other Factors

Candidates may be required to participate in oral presentations. In such cases, the City Attorney's Office will schedule interviews. During the interview, all those significant members of the firm who will be servicing SFDCP-related matters are expected to be present.

C. Estimated Schedule.

The following schedule sets forth the timetable for the selection of Qualified Candidates. The dates given for items 5 and 6 are merely estimates and are not binding on the City.

❶ Issuance of this RFQ	<i>Thursday, August 23, 2012</i>
❷ Questions or Requests for Clarification	<i>Friday, September 14, 2012</i>
❸ Issuance of Addendum to RFQ Responding to Questions or Requests for Clarification	<i>Monday, October 1, 2012</i>

④ Qualifications Statement Submission Deadline	<i>Friday, October 26, 2012</i>
⑤ Commencement of Evaluation Process	<i>Tuesday, October 30, 2012</i>
⑥ Notice to Candidates of Evaluation Results	<i>Monday, November 26, 2012</i>

V. TERMS AND CONDITIONS GOVERNING THIS RFQ

A. Candidate Information.

Candidates who request and receive copies of this RFQ must provide the following information to the City Attorney's Office: Name of Candidate, name of contact person for Candidate and the address, telephone number, facsimile number, and email address of such contact person. Each Candidate shall be responsible for notifying the City Attorney's Office (at the address specified in Section IV(A), above) in writing of any changes in such information. Any such notice must specifically reference this RFQ.

B. Questions Regarding this RFQ.

Candidates must raise any questions they may have regarding this RFQ by the date specified in Section IV(C), above. Any questions regarding this RFQ must be presented to the City Attorney's Office in writing at the address set forth in Section IV(A), above. No questions regarding this RFQ will be accepted after such date. If, in the opinion of the City Attorney's Office, any answer constitutes a material addition to or modification of this RFQ, such answer will be confirmed in a written amendment to this RFQ.

C. Ambiguities and Omissions.

Candidates are responsible for reviewing all portions of this RFQ. Candidates shall promptly notify the City Attorney's Office, in writing, if the Candidate discovers in the RFQ any ambiguity, discrepancy, omission, or other error. Any such notification shall be directed to the City Attorney's Office promptly after discovery, but in no event later than five working days prior to the date for receipt of the Qualifications Statements. Modifications and clarifications will be made by addenda as provided below.

D. Objections to RFQ Terms.

Should any Candidate object, on any ground, to any provision or requirement set forth in this RFQ, the Candidate must, not more than ten calendar days after the RFQ is issued, provide written notice to the City Attorney's Office specifically setting forth the grounds for the objection. The failure of a Candidate to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

E. Addenda to this RFQ.

The City Attorney's Office may modify this RFQ by issuing a written addendum prior to the Submission Deadline. The City Attorney's Office will notify each known Candidate of any such addendum by transmitting a copy to the most recent address or facsimile number of such Candidate provided pursuant to Section IV(A) of this RFQ. Notwithstanding this provision, each Candidate shall be responsible for ensuring that its Qualifications Statement reflects any and all addenda issued by the City Attorney's Office prior to the Qualified Statement Submission Deadline, regardless of when its Qualifications Statement is submitted. Thus, the City recommends that Candidates contact the City Attorney's Office before submitting their Qualifications Statement to determine if any addenda have been issued.

F. Amendment by Candidate of Qualifications Statement.

A Candidate may amend its Qualifications Statement at any time before the Submission Deadline. Such amendment shall be made by submitting a new Qualifications Statement in its entirety (regardless of the scope of the amendment), with the amended portions marked or highlighted. Such new Qualifications Statement shall be submitted prior to the Submission Deadline in the same manner as otherwise required herein for Qualifications Statements.

G. Term of Qualifications Statement.

Submission of a Qualification Statement signifies that the proposed services and fees are valid for 365 calendar days from the due date for submissions and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

H. Errors and Omissions in Qualifications Statement.

Failure by the City to object to an error, omission or deviation in the Qualifications Statement will in no way modify the RFQ or excuse the responding Candidate from full compliance with the specifications of the RFQ, or any contract awarded pursuant to the RFQ.

I. No Waiver.

No waiver of any provision of this RFQ shall be implied from any failure by the City Attorney's Office and/or the SFDCP to recognize or take action on account of any failure by a Candidate to observe any provision of this RFQ.

J. Retention by the City of Qualifications Statements and Related Documents.

Qualifications Statements and any other documents or materials submitted in response to this RFQ shall, upon submission, become the property of the City and may be used by the City in any way it deems appropriate.

K. Sunshine Ordinance.

In accordance with San Francisco Administrative Code Section 67.24(e), bids, responses to requests for proposals, responses to requests for qualifications and all other records of

communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by such Section 67.24(e) will be made available to the public upon request.

L. Candidate's Obligations Under the Campaign Reform Ordinance.

All Candidates must comply with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which states in part:

No person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District, (1) Shall make any contribution to: (A) An individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves; (B) A candidate for the office held by such individual; or (C) A committee controlled by such individual or candidate (2) Whenever the agreement or contract has a total anticipated or actual value of \$50,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of \$50,000.00 or more in a fiscal year of the City and County (3) At any time from the commencement of negotiations for such contract until (A) The termination of negotiations for such contract; or (B) Six months have elapsed from the date the contract is approved.

If a Candidate is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Candidate is prohibited from making contributions to:

- The officer's re-election campaign
- A candidate for that officer's office
- A committee controlled by the officer or candidate

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a request for proposal or a request for qualifications, and requests to be placed on a mailing list do not constitute negotiations.

Persons who knowingly or willfully violate section 1.126 shall be guilty of a misdemeanor and are subject to a fine of up to \$5,000 and a jail term of six months, or both. (San Francisco Campaign and Governmental Conduct Code Section 1.170(a)). Persons who negligently violate section 1.126 are subject to a civil penalty of up to \$5,000. (San Francisco Campaign and Governmental Conduct Code Section 1.170(b)). Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation. (San Francisco Campaign and Governmental Conduct Code Section 1.170(c)).

Any questions regarding this ordinance should be directed to the San Francisco Ethics Commission at (415) 252-3100.

M. Reservations of Rights by the City.

The issuance of this RFQ does not constitute an agreement by the City or the SFDCP that any subsequent selection process will occur or that any contract (including the Contract) will be entered into by the City Attorney's Office. The City expressly reserves the right at any time to:

- Waive any defect or informality in any Qualifications Statement or the procedure set forth in this RFQ;
- Reject any or all Qualifications Statements;
- Issue a new request for qualifications in lieu of this RFQ;
- Change the subsequent selection process;
- Procure all or any portion of the Work by any other means;
- Extend the Submission Deadline, or accept amendments to Qualifications Statements after expiration of the dates set forth in this RFQ;
- Determine that the Work will not be pursued.

N. Subcontracting

Firms are prohibited from subcontracting all or any part of the services to be performed for the SFDCP without prior written approval from the Office of the City Attorney. Any agreement made in violation of this provision shall confer no rights on any other party and shall, at the City's sole option, be void.

VI. PROTESTS

A. Protest of Non-Responsiveness Determination

Within five (5) working days of the issuance of a notice of non-responsiveness, any firm that has submitted a Qualifications Statement and believes that the City has incorrectly determined that its submission is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City Attorney's Office on or before the fifth (5th) working day following issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent Candidate, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is

based. In addition, the protestor must specify facts and evidence sufficient for City to determine the validity of the protest.

B. Protest of Qualified Candidate Pool

Within five (5) working days of the issuance of a notice of intent to place Candidates in a pool of qualified candidates, any Candidate that has submitted a responsive Qualifications Statement and believes that City has incorrectly selected another law firm from the pool of qualified candidates may submit a written notice of protest. Such notice of protest must be received by the City Attorney's Office on or before the fifth (5th) working day after City's issuance of the notice of intent to place candidates in pools of qualified candidates.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the candidate, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

C. Delivery of Protests

All protests must be received by December 4, 2012. Protests must be delivered to the addresses set forth in Section IV(a), above.

VII. CITY CONTRACTING REQUIREMENTS

In order to be selected as a Qualified Candidate, the law firm must be willing to comply with the following requirements with respect to the Contract:

A. Form and Content.

The Candidate must be willing to enter into a written agreement that is substantially in the form of the Agreement for Professional Services attached as *Appendix A*. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

B. Business Tax Registration.

At the time the Contract is executed, the Qualified Candidate in question must have a current and valid San Francisco Business Tax Certificate. This certificate can be obtained by properly submitting to the City's Tax Collector a completed Business Tax Registration Declaration and paying the required registration fee. The current form of such declaration is attached as *Appendix B*.

C. Certification of Chapter 12B Compliance.

At the time the Contract is executed, the Qualified Candidate in question must have been certified by the City’s Human Rights Commission (“HRC”) to be in compliance with Chapter 12B of the San Francisco Administrative Code. In order to obtain such certification, Candidates must submit to HRC a “Chapter 12B: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101). The current version of this form is attached as Appendix C. Two related forms may also need to be submitted to HRC pursuant to HRC instructions: a “Reasonable Measures Affidavit” (Form HRC-12B-102); and a “Substantial Compliance Authorization Form” (Form HRC-12B-103). The current versions of such forms are attached as Appendix D.

D. Nondiscrimination in Contracts and Benefits.

The successful Candidate will be required to agree to comply with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC’s website at www.sfhrc.org.

E. Minimum Compensation Ordinance (MCO)

The successful Candidate will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see Administrative Code §12P

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

F. Health Care Accountability Ordinance (HCAO)

The successful Candidate will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

G. Conflicts of Interest

The successful Candidate will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful Candidate will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful Candidate might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Candidate that the City has selected the Candidate.

APPENDIX A

Form of Contract

AGREEMENT BETWEEN
CITY AND COUNTY OF SAN FRANCISCO

and

[Insert name of Law Firm or Consultant Firm]
For Professional Legal Services [or Consultant Services]

This Agreement, dated for convenience of reference as of **[Insert date]**, is by and between the City and County of San Francisco, a municipal corporation, (“City”) acting by and through its Office of the City Attorney (the "City Attorney"), and **[Insert name of Law Firm (or Consultant firm)]**, a _____ (“**Counsel/Consultant**”).

This Agreement is made with reference to the following facts and circumstances:

A. City wishes **[Consultant/Counsel]** to provide professional legal services, on an as-needed basis, to assist the City Attorney by **[Insert description of services required]**.

B. The San Francisco Charter vests the City Attorney with authority to represent the City in legal proceedings and retain consultants and outside legal counsel to assist him with such representation.

C. **[Consultant/Counsel]** is known for its expertise in the area of **[Insert area(s) of expertise]** and is well qualified to assist the City Attorney in accordance with the provisions of this Agreement.

D. **[Consultant/Counsel]** will report to and work under the direction and control of the City Attorney as provided in this Agreement.

E. This Agreement creates an on-going attorney client relationship between Counsel and the City and County of San Francisco. The attorney client relationship shall remain in place at all times from the effective date of this Agreement until such time as either party provides written notice of its intent to terminate the attorney client relationship. The attorney client relationship will remain in place continuously under this Agreement until such notice is provided, regardless of whether Counsel is actively performing legal work for the City and County of San Francisco at any given time.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF SERVICES

1.1 Scope

Upon request of the City Attorney, **[Consultant/Counsel]** shall advise and assist the City Attorney on matters concerning **[Describe scope of services as appropriate]**. This representation will occur in the context of a joint defense agreement that permits **[Consultant/Counsel]** to participate in and assist the City Attorney's Office in responding to...**[insert appropriate information...]**

The Scope of Services may be modified from time to time, in writing, by the City Attorney. **[Insert following provision if Counsel has provided a letter of engagement]** **[Consultant's/Counsel's]** level of representation of the City is more specifically described in its letter of **[Provide date of engagement letter]** **[or the Scope of Services Description]** attached hereto as Exhibit **[xx]**. To the extent there is any conflict or inconsistency between the terms of engagement set forth in **[Consultant's/Counsel's]** **[Insert date]** letter, and the terms of this Agreement, the parties agree that terms of this Agreement shall control.

(a) The City Attorney, as the chief legal officer of San Francisco, shall retain final authority over all aspects of the City's response to the **[Litigation/Matter]** **[choose one throughout the document.]**.

(b) **[Consultant/Counsel]** are authorized to take appropriate legal steps to **[handle/prosecute]** the **[Litigation/Matter]** as it pertains to any and all claims made and relief sought **[[Add if adequate: "as to the individuals represented by Counsel."]]** The City Attorney shall designate members of his staff to monitor, review and participate in the **[handling/prosecution]** of all aspects of the **[Litigation/Matter]**.

(c) **[Consultant/Counsel]** shall not make or distribute any press releases without the express permission of the City Attorney. **[Consultant/Counsel]** shall make every effort not to make statements to the press without the permission and consent of the City Attorney.

(d) **[Consultant/Counsel]** shall, upon request, provide copies of pleadings, discovery requests and responses, and relevant correspondence related to the **[Litigation/Matter]** to the City Attorney. **[Consultant/Counsel]** shall consult in advance with, and obtain the prior approval of the City Attorney concerning all substantive aspects of the **[Litigation/Matter]** as it relates to the City.

(e) **[Consultant/Counsel]** shall provide sufficient resources, including attorney time, and competent personnel to **[handle/prosecute]** the **[Litigation/Matter]** through judgment after trial court proceedings or, subject to approval as provided herein, through settlement.

1.2 Ownership of Documents, Reports and Data Files

Any and all documents, reports and/or data files originated and prepared by **[Consultant/Counsel]** pursuant to this Agreement shall be and become the property of the City for its use in any manner it deems appropriate. If the City disseminates any or all of such information to other persons who are not public officers or employees, it may identify **[Consultant/Counsel]** as the source of said information. The City need not receive **[Consultant's/Counsel's]** authorization for any such dissemination, but will seek to advise of such dissemination before it is done. Nothing herein shall modify existing law regarding ownership of an attorney's work product, nor limit in any respect an attorney's obligations under the applicable Rules of Professional Conduct.

1.3 Retention of Records

[Consultant/Counsel] shall maintain records, including records of financial transactions, pertaining to the performance of this Agreement, in their original form, in accordance with requirements prescribed by the City. These records shall be retained for a period of no less than five years following the expiration date of this Agreement. Said records shall be subject to examination and audit by authorized City personnel at any time during the term of this Agreement or within the five years following the termination date of this Agreement.

1.4 Maintaining Attorney-Client Privilege

[Consultant/Counsel] acknowledge that they have no authority to waive the attorney-client privilege on behalf of the City and agree to conduct their activities relating to this matter in such a manner as to maintain the confidentiality of communications between **[Consultant/Counsel]** and the City (including the City Attorney and any City official or employee). **[Consultant/Counsel]** further agree not to waive the attorney-client privilege with respect to documents or communications obtained or conducted in connection with this matter without the express written consent of the City Attorney.

[The following subsection is most suitable for large projects to be performed over a significant period of time; i.e., 6 months or more]

1.5 Status Reports

[Consultant/Counsel] shall provide the City Attorney, without charge to the City, a written status report on work performed (the "Status Report") not less frequently than once every _____ **[insert amount in words and number, e.g.; thirty (30)]** days from the commencement of the term of this Agreement (the "Reporting Period"). The Status Report shall include, but not be limited to, the following: (a) a list of the attorneys who have provided services during the Reporting Period; (b) a description of significant issues resolved or other significant progress made during the Reporting Period; and (c) outstanding issues known to **[Consultant/Counsel]** that remain

unresolved. The Status Report shall not exceed more than **[insert amount in words and number, e.g.; two (2)]** pages. **[Insert if you have a form that you would like Counsel to use:** The form shall be substantially in the form of the document attached hereto as Exhibit **XX.**] Upon request by the City Attorney and without charge to the City, **[Consultant/Counsel]** shall confer with the City Attorney on each Status Report for a period or periods not exceeding a total of 1 hour.

2. TERM

The term of this Agreement (the "Term") shall be from **[Insert beginning date]** to **[Insert ending date]**, unless sooner terminated according to the terms of this Agreement, including, but not limited to, the City Attorney's exercising its rights to terminate under Section 6 of this Agreement. This Agreement may be further extended for up to one year by agreement of the City Attorney and **[Consultant/Counsel]**.

3. EFFECTIVE DATE

This Agreement shall become effective upon full execution and delivery of this Agreement by both parties, provided that **[Consultant/Counsel]** shall not perform any work under this Agreement until the City Attorney gives **[Consultant/Counsel]** either written or oral notice to proceed with performance of the Scope of Services under this Agreement.

4. COMPENSATION

4.1 Fee and Expense Schedule

City shall compensate **[Consultant/Counsel]** for all of the services rendered by **[Consultant/Counsel]** under this Agreement as set forth in the letter setting forth the firm's Fee and Expense Schedule **[Engagement Letter would also be referenced in this Paragraph, if applicable]** attached hereto as Exhibit **[XX]**, subject to the terms and conditions contained in Exhibit **[XX]** and elsewhere in this Agreement. Such compensation is the total compensation for all services this Agreement contemplates.

The Fee and Expense Schedule may not be modified except by written instrument executed and approved in the same manner as this Agreement. The Fee Schedule sets forth a breakdown of the fees and reimbursable amounts payable under this Agreement. Notwithstanding anything to the contrary herein, the compensation of **[Consultant/Counsel]** is conditioned upon the City Attorney's prior reasonable determination that the services have been satisfactorily rendered in accordance with this Agreement. Compensation shall be payable within a reasonable time from receipt of invoices in accordance with Section 5. In no event shall the City be liable for interest or late charges.

4.2 Not to Exceed Contract Amount

In no event shall the total fees and reimbursable amounts payable under this Agreement exceed _____ **[Insert amount in words]** (\$ _____) **[Insert amount in numbers]**. The not to exceed amount may not be modified except by written instrument executed and approved in the same manner as this Agreement. **[Consultant/Counsel]** shall keep the City Attorney informed on a periodic basis, not less than monthly, of the amount of its billings and notify the City Attorney in writing immediately upon determining that such amount is within _____ **[Insert amount in words]** (\$ _____) **[Insert amount in numbers]** of the total amount of funds available under this Agreement.

4.3 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Counsel’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

5. METHOD OF PAYMENT

5.1 Invoices

As a condition to City’s obligation to pay any compensation, **[Consultant/Counsel]** must furnish invoices under this Agreement in a form reasonably acceptable to the City Attorney. **[Consultant/Counsel]** shall provide the City Attorney with monthly invoices that identify services by task with a brief descriptive narrative of the service provided, by whom rendered, and the time (hours and fractions thereof) expended.

Payments will be made to **[Consultant/Counsel]** no more frequently than once each month. **[Consultant/Counsel]** must submit all statements for services rendered and expenses incurred to the City Attorney or his designee. Payments will be made to **[Consultant/Counsel]** upon approval of the City Attorney consistent with the terms and conditions of this Agreement. In no event shall the City be liable for interest or

late charges. In addition, as a condition to City's obligation to pay, **[Consultant/Counsel]** shall have provided to the City Attorney a current certificate of insurance and endorsement in accordance with Section 8.3.

5.2 Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Section 21.35, **[Consultant/Counsel]** - or any **[subcontractor/subconsultant]** under this Agreement - who submits a false claim shall be liable to the City for three times the amount of damages that the City sustains because of the false claim. **[Consultant/Counsel]** - or any **[subcontractor/subconsultant]** - who submits a false claim shall also be liable to the City for the costs, including attorneys' fees and costs, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. **[Consultant/Counsel]** or any **[subcontractor/subconsultant]** will be deemed to have submitted a false claim to the City if **[Consultant/Counsel]** or any such **[subcontractor/subconsultant]**: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

5.3 Taxes

(a) Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation **[Consultant/Counsel]**.

(b) **[Consultant/Counsel]** recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the **[Consultant/Counsel]** to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) **[Consultant/Counsel]**, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) **[Consultant/Counsel]**, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of

real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. **[Consultant/Counsel]** accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) **[Consultant/Counsel]**, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) **[Consultant/Counsel]** further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

5.4 Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or **[Consultant's/Counsel's]** receipt thereof by **[Consultant/Counsel]**, shall not discharge **[Consultant's/Counsel's]** obligation to correct unsatisfactory work although the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made. The City Attorney may reject work product that does not conform to the requirements of this Agreement, and in such case **[Consultant/Counsel]** shall correct any deficiencies without delay and without additional charge under this Agreement.

6. TERMINATION

6.1 Termination Without Cause

The City Attorney, in his sole discretion, may terminate this Agreement for the City's convenience and without cause, at any time, by giving **[Consultant/Counsel]** at least thirty (30) days written notice of such termination.

In the event of such termination City will pay **[Consultant/Counsel]** for those services performed in accordance with this Agreement, and to the satisfaction of the City, up to the date of termination. In no event will the City be liable for costs incurred by **[Consultant/Counsel]** after receipt of a notice of termination.

Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this Section or is not permitted under Section 11 or any other provision of this Agreement.

The limitations set forth in this Section shall not prevent **[Consultant/Counsel]** from recovering costs that **[Consultant/Counsel]** necessarily incurred in discontinuing further work after receipt of the termination notice to the extent such costs are otherwise payable under this Agreement.

6.2 Non Exclusive Remedies

The City's right to terminate this Agreement under this Section 6 is not its exclusive remedy but is in addition to all other remedies available to the City by law, in equity, or under the provisions of this Agreement.

6.3 Duties Upon Termination

Upon any termination of this Agreement, **[Consultant/Counsel]** shall immediately provide City with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to City. **[Consultant/Counsel]** further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of City.

7. STAFFING

7.1 Commitment of Qualified Personnel

Services under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of **[Consultant/Counsel]**. Particular tasks must be performed by lawyers with appropriate levels of experience for the performance of such tasks.

7.2 Named Personnel

The law office of **[Insert name of Law Offices]** shall provide the legal services required under this Agreement.

[Consultant/Counsel] has been selected due to the unique skills and experience of counsel and the following named personnel:

_____ **Lead Attorney**

The lead attorney(s) named above shall be the principal contact with the City Attorney. Any change in the lead attorney(s) or addition to or substitution of any of the other named staff requires the City Attorney's prior written approval. Staffing decisions required to be taken by Counsel in an emergency for which prior written approval of the City Attorney is not feasible shall be limited to such emergency situation

only, taken by Counsel in a reasonable manner and require immediate follow-up discussions with the City Attorney.

At all times Counsel shall staff meetings, hearings, proceedings and the other elements of the scope of services to be rendered under this Agreement in a cost effective manner, consistent with the requirements of Section 7.1 above and as otherwise provided in this Agreement. Prior approval must be obtained from the City Attorney whenever the lead attorney anticipates the assignment of multiple staff to attend meetings, hearings or other proceedings and to perform the various elements of the scope of services to be rendered under this agreement.

Before undertaking any document organization or review, any drafting of any motion, pleading, letter or other document, any legal research or any other significant legal work, Counsel shall consult with the City Attorney about the most cost effective method of doing work including but not limited to using City staff or City Attorney staff to do as much of the work as appropriate.

[Add the following section if use of investigators is anticipated.]

7.3 Use of City Attorney Investigators

[Consultant/Counsel] agrees to use investigators of the City Attorney in developing information necessary to perform the services described herein.

8. INSURANCE

8.1 Required Coverage

Without in any way limiting **[Consultant's/Counsel's]** liability pursuant to the "Indemnification" section of this Agreement, and subject to approval by City's Risk Manager of the insurer and the policy forms, **[Consultant/Counsel]** shall procure and maintain throughout the Term of this Agreement, at **[Consultant's/Counsel's]** sole expense, the following insurance:

- (a) Workers' Compensation, in statutory amounts, with Employer's Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness; and
- (b) Comprehensive Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limits for bodily injury and property damage, including coverage for owned and non-owned and hired auto coverage, as applicable; and
- (c) Comprehensive General Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limit for

bodily injury and property damage, including contractual liability, personal injury, products and completed operations coverages.

(d) Professional Liability Insurance with limits not less than one million dollars (\$1,000,000) each claim, with a deductible of not greater than _____ Dollars (\$_____) each claim, covering legal malpractice arising from any services provided under this Agreement.

8.2 Liability Policies

Each policy shall be with an insurer with a rating comparable to A-, VIII or higher, that is authorized to do business in the State of California. Except for Professional Liability Insurance, all liability policies that this Section requires Counsel to maintain shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought.

Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

If requested by the City Attorney, [**Consultant/Counsel**] will provide a complete copy of each insurance policy required under Section 8.1 of this Agreement.

8.3 Certificates

Before the commencement date of this Agreement, [**Consultant/Counsel**] shall deliver to the City Attorney a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. Each policy and certificate shall provide that no cancellation, major change in coverage or expiration shall become effective or occur until at least thirty (30) days after receipt of written notice by the City Attorney.

8.4 General Annual Aggregate Limits

Should [**Consultant/Counsel**] provide any of the required liability insurance under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the occurrence or claims limits specified above.

8.5 Lapse in Coverage

Should any required insurance lapse during the term of this Agreement, **[Consultant/Counsel]** shall immediately notify the City Attorney. Regardless of whether the City Attorney receives such notice from **[Consultant/Counsel]**, the City Attorney shall have the sole option to direct **[Consultant/Counsel]** to immediately discontinue all work under this Agreement. Requests for payments originating after such lapse shall not be processed until the City Attorney receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City Attorney may, at his sole option, terminate this Agreement upon the lapse of any required insurance, and City shall have no further obligation to pay **[Consultant/Counsel]** after such termination.

8.6 Claims Made Forms

Should any of the required insurance be provided under a claims-made form, **[Consultant/Counsel]** shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of the term of this Agreement, so if any occurrences during the term of this Agreement give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

8.7 Review of Requirements

At the request of the City Attorney, **[Consultant/Counsel]** and the City Attorney shall periodically review the limits and types of insurance carried pursuant to this Section 8. If the general commercial practice in the City is to carry liability insurance in an amount or coverage materially greater than the amount or coverage being carried by **[Consultant/Counsel]** for risks comparable to those associated with the activities to be conducted under this Agreement, then the amounts or coverage carried by **[Consultant/Counsel]** shall be increased to conform to such general commercial practice.

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Limitations on Assignment

[Consultant/Counsel] shall not, without written consent of the City Attorney, assign or transfer any interest in this Agreement, or delegate its performance of duties under this Agreement, in whole or in part; and no approval of any assignment, transfer, or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties. **[Consultant/Counsel]** recognizes and agrees that the services to be performed under this Agreement are personal in nature, and the City Attorney may give, withhold or condition his consent in his sole and absolute discretion.

9.2 Limitations on Subcontracting

[**Consultant/Counsel**] is prohibited from subcontracting this Agreement or any part of it unless [**Consultant/Counsel**] first obtains City's written approval of the [**subcontractor/subconsultant**] and the scope of services to be performed under any subcontract. Any such subcontracting will be subject to the approval of the City Attorney in his sole and absolute discretion. An agreement made in violation of this provision shall confer no rights on any other party and shall, at City's sole option, be void.

10. CONFLICTS OF INTEREST

10.1 Knowledge of Conflict

Through its execution of this Agreement, [**Consultant/Counsel**] acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 *et seq.* and sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

10.2 Disclosure of Any Conflicts

By executing this Agreement, [**Consultant/Counsel**] further certifies that it has made a complete disclosure to the City Attorney of all facts bearing upon any possible interest, direct or indirect, which it believes any member of the City, or other officer, agent or employee of City, presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder, except as disclosed in advance to and waived in writing by City. The existence of any actual or potential conflict must be promptly reported by [**Consultant/Counsel**] to the City Attorney and resolved to the City Attorney's satisfaction before representation proceeds. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination of this Agreement by the City Attorney.

10.3 No Conflict of Interest

[**Consultant/Counsel**] has done a conflicts check within its firm and certifies that it has no conflict of interest with respect to its assistance to the City Attorney or has obtained a written conflicts waiver from the City Attorney, in his sole and absolute discretion.

11. NO SPECIAL DAMAGES

The City's payment obligations under this Agreement shall be limited to the payment of compensation provided for in Exhibit B (Fee and Expense Schedule) attached hereto. Notwithstanding any other provision of this Agreement, in no event shall the City

be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

12. NONDISCRIMINATORY EMPLOYMENT AND BUSINESS OPPORTUNITIES PRACTICES

12.1 [Consultant/Counsel] Shall Not Discriminate

In the performance of this Agreement, **[Consultant/Counsel]** agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, height, weight, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with **[Consultant/Counsel]**, in any of **[Consultant's/Counsel's]** operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by **[Consultant/Counsel]**.

12.2 Subcontracts

[Consultant/Counsel] shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the City Attorney) and shall require all **[subcontractors/subconsultants]** to comply with such provisions. **[Consultant's/Counsel's]** failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

12.3 Non-Discrimination of Benefits

[Consultant/Counsel] does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, or where any part of this Agreement is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension or retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing registration.

12.4 Declaration

As a condition to this Agreement, [Consultant/Counsel] shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC 12B-101) with supporting documentation.

13. NOTICES

All notices or other communications to either party by the other as may be required by this Agreement shall be deemed given when made in writing and delivered in person or deposited in the United States mail as follows:

To the City: San Francisco City Attorney's Office
City and County of San Francisco

Fax: _____

Attn: _____
Deputy City Attorney

To the [Consultant/Counsel]: _____

[Insert Consultant/Counsel name & address]

Fax: _____

or to such other address as either City or Counsel may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section 13 at least ten (10) days prior to the effective date of such change.

Any notice hereunder shall be deemed to have been given three (3) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth herein or such other number as may be provided from time to time.

14. INDEPENDENT [CONSULTANT/COUNSEL]; PAYMENT OF TAXES AND OTHER EXPENSES

(a) Independent Consultant. [Consultant/Counsel] or any agent or employee of [Consultant/Counsel] shall be deemed at all times to be an independent [Consultant/Counsel] and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. [Consultant/Counsel] or any agent or employee of [Consultant/Counsel] shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. [Consultant/Counsel] or any agent or employee of [Consultant/Counsel] is liable for the acts and omissions of itself, its employees and its agents. [Consultant/Counsel] shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to [Consultant/Counsel] performing services and work, or any agent or employee of [Consultant/Counsel] providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and [Consultant/Counsel] or any agent or employee of [Consultant/Counsel].

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of [Consultant's/Counsel's] work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which [Consultant/Counsel] performs work under this Agreement.

(b) **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that [Consultant/Counsel] is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by [Consultant/Counsel] which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by [Consultant/Counsel] for City, upon notification of such fact by City, [Consultant/Counsel] shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to [Consultant/Counsel] under this Agreement (again, offsetting any amounts already paid by [Consultant/Counsel] which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Consultant/Counsel shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that [Consultant/Counsel] is an employee for any

other purpose, then **[Consultant/Counsel]** agrees to a reduction in City’s financial liability so that City’s total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that **[Consultant/Counsel]** was not an employee.

15. INDEMNIFICATION

[Consultant/Counsel] shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of **[Consultant/Counsel]** or loss of or damage to property, arising directly or indirectly from **[Consultant’s/Counsel’s]** performance of this Agreement, including, but not limited to, **[Consultant’s/Counsel’s]** use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on **[Consultant/Counsel]**, its **[subconsultants/subcontractors]** as may be permitted under this Agreement or their agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City.

In addition to **[Consultant’s/Counsel’s]** obligation to indemnify City, **[Consultant/Counsel]** specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to **[Consultant/Counsel]** by City and continues at all times thereafter.

[Consultant/Counsel] shall indemnify and hold City harmless from all loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

16. DEFAULT; REMEDIES

(a) Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

(1) **[Consultant/Counsel]** fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 5.2, 5.3, 8, 9, 17, 29.3, 29.12, and 29.13.

(2) **[Consultant/Counsel]** fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Consultant.

(3) **[Consultant/Counsel]** (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of **[Consultant/Counsel]** or of any substantial part of **[Consultant's/Counsel's]** property or (E) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to **[Consultant/Counsel]** or with respect to any substantial part of **[Consultant/Counsel]** property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of **[Consultant/Counsel]**.

(b) On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of **[Consultant/Counsel]** any Event of Default; **[Consultant/Counsel]** shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of such costs or expenses are incurred at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to **[Consultant/Counsel]** under this Agreement or any other agreement between City and **[Consultant/Counsel]** all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from **[Consultant/Counsel]** pursuant to the terms of this Agreement or any other agreement.

(c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

17. PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY

[Consultant/Counsel] understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, **[Consultant/Counsel]** will have access to private or confidential information, including, without limitation, attorney work product and information subject to the attorney-client privilege, which may be owned or controlled by City and that such information may

contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. **[Consultant/Counsel]** agrees that all information created by **[Consultant/Counsel]** for City or disclosed by City to **[Consultant/Counsel]** shall be held in confidence and used only in performance of the Agreement. This section shall survive the termination or expiration of this Agreement.

18. OWNERSHIP OF RESULTS

Any interest of **[Consultant/Counsel]** or its **[subconsultants/subcontractors]**, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Consultant or its **[subconsultants/subcontractors]** in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. Any such work product shall be attorney work product and subject to the attorney-client privilege of City.

19. WORKS FOR HIRE

If, in connection with services performed under this Agreement, **[Consultant/Counsel]** or its **[subconsultants/subcontractors]** create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by **[Consultant/Counsel]** or its **[subconsultants/subcontractors]** under this Agreement are not works for hire under U.S. law, **[Consultant/Counsel]** hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, **[Consultant/Counsel]** may retain and use copies of such works for reference and as documentation of its experience and capabilities.

20. AUDIT AND INSPECTION OF RECORDS

[Consultant/Counsel] agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. **[Consultant/Counsel]** will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. **[Consultant/Counsel]** shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

21. NON-WAIVER OF RIGHTS

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

22. EARNED INCOME CREDIT (EIC) FORMS

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) **[Consultant/Counsel]** shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless **[Consultant/Counsel]** has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by **[Consultant/Counsel]**; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by **[Consultant/Counsel]** of the terms of this Agreement. If, within thirty days after **[Consultant/Counsel]** receives written notice of such a breach, **[Consultant/Counsel]** fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, **[Consultant/Counsel]** fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subcontract entered into by **[Consultant/Counsel]** shall require the subcontractant to comply, as to the **[subconsultant's/subcontractor's]** Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

23. MACBRIDE PRINCIPLES—NORTHERN IRELAND

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By

signing below, the person executing this agreement on behalf of [Consultant/Counsel] acknowledges and agrees that he or she has read and understood this section.

24. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges [Consultant/Counsel] not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

25. DRUG-FREE WORKPLACE POLICY

[Consultant/Counsel] acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. [Consultant/Counsel] agrees that any violation of this prohibition by [Consultant/Counsel] 1, its employees, agents or assigns will be deemed a material breach of this Agreement.

26. RESOURCE CONSERVATION

Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by [Consultant/Counsel] to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

27. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

[Consultant/Counsel] acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a [Consultant/Counsel], must be accessible to the disabled public. [Consultant/Counsel] shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. [Consultant/Counsel] agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of [Consultant/Counsel], its employees, agents or assigns will constitute a material breach of this Agreement.

28. GRAFFITI REMOVAL

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid

detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

[Consultant/Counsel] shall remove all graffiti from any real property owned or leased by **[Consultant/Counsel]** in the City and County of San Francisco within forty eight (48) hours of the earlier of **[Consultant's/Counsel's]** (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a **[Consultant/Counsel]** to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of **[Consultant/Counsel]** to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

29. GENERAL CONDITIONS

29.1 Severability

Any provision or portion of this Agreement prohibited as unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding Agreement enforceable in accordance with its terms.

29.2 Governing Law

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

29.3 Compliance with Laws

[Consultant/Counsel] shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state and federal laws in any manner affecting the performance of this Agreement and must at all times comply

with such codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

29.4 Amendments

Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both parties hereto or except as otherwise expressly provided in this Agreement.

29.5 Survival

The following sections shall survive any termination, expiration or cancellation of this Agreement: 5.2 – 5.4, 8, 11, 14, 15, 17 – 19, 28, 29.1, 29.2, 29.4, 29.13, and 29.15.

29.6 Approvals by City; Point of Contact

Except as otherwise provided in this Agreement or as otherwise required by City's Charter, all approvals or consents requested or required hereunder may be given by the City Attorney or his designee. All such approvals or consents may be given or withheld in the City Attorney's sole discretion, unless otherwise expressly provided. Silence shall not be considered approval of City for any purposes hereof. Any legal advice given by Counsel with respect to this representation shall be rendered to the City Attorney, or the City Attorney's designee.

29.7 Counsel Responsibility

Counsel shall report to, and work under the direction and control of, the City Attorney or his designee, in the performance of the services. Counsel agrees to be solely responsible, however, for its own actions and those of its subordinates and **[subcontractors/subconsultants]** throughout the term of this Agreement. Counsel shall handle any press contact it receives directly or indirectly in connection with the subject of this Agreement in coordination with the City Attorney. Counsel also agrees that any court and administrative filings, written opinions and any correspondence containing substantive advice shall be reviewed and approved by City Attorney before issuance.

29.8 Notification of Limitations on Contributions

Through execution of this Agreement, **[Consultant/Counsel]** acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such

individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. [Consultant/Counsel] acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of fifty thousand dollars (\$50,000) or more. [Consultant/Counsel] further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of [Consultant/Counsel's] board of directors; Counsel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Counsel; any subconsultant listed in the bid or contract; and any committee that is sponsored or controlled by Counsel. Additionally, Counsel acknowledges that Counsel must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

29.9 Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

29.10 Requiring Minimum Compensation for Covered Employees

(a) Counsel agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Counsel's obligations under the MCO is set forth in this Section. Counsel is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Counsel to pay Counsel's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Counsel is obligated to keep informed of the then-current requirements. Any subcontract entered into by Counsel shall require the subconsultant to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Counsel's obligation to ensure that any subconsultants of any tier under this Agreement comply with the requirements of the MCO. If any subconsultant under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Counsel.

(c) Counsel shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(d) Counsel shall maintain employee and payroll records as required by the MCO. If Counsel fails to do so, it shall be presumed that the Counsel paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Counsel's job sites and conduct interviews with employees and conduct audits of Counsel.

(f) Counsel's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City, in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Counsel fails to comply with these requirements. Counsel agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Counsel's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Counsel understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, an under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Counsel fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Counsel fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) Counsel represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(i) If Counsel is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than twenty-five thousand dollars (\$25,000), but Counsel later enters into an agreement or agreements that cause Counsel to exceed that amount in a fiscal year, Counsel shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Counsel and this department to exceed twenty-five thousand dollars (\$25,000) in the fiscal year.

29.11 Requiring Health Benefits for Covered Employees

Counsel agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco

Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Counsel shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Counsel chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Counsel is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Counsel's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Counsel if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Counsel fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Counsel fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Counsel shall require the subconsultant to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Counsel shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the subconsultant of the obligations under the HCAO and has imposed the requirements of the HCAO on subconsultant through the Subcontract. Each Counsel shall be responsible for its subconsultants' compliance with this Chapter. If a subconsultant fails to comply, the City may pursue the remedies set forth in this Section against Counsel based on the subconsultant's failure to comply, provided that City has first provided Counsel with notice and an opportunity to obtain a cure of the violation.

(e) Counsel shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Counsel's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Counsel represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Counsel shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

(h) Counsel shall keep itself informed of the current requirements of the HCAO.

(i) Counsel shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subconsultants and subtenants, as applicable.

(j) Counsel shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

(k) Counsel shall allow City to inspect Counsel's job sites and have access to Counsel's employees in order to monitor and determine compliance with HCAO.

(l) City may conduct random audits of Counsel to ascertain its compliance with HCAO. Counsel agrees to cooperate with City when it conducts such audits.

(m) If Counsel is exempt from the HCAO when this Agreement is executed because its amount is less than twenty five thousand dollars (\$25,000) [fifty thousand dollars (\$50,000) for nonprofits], but Counsel later enters into an agreement or agreements that cause Counsel's aggregate amount of all agreements with City to reach seventy-five thousand dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Counsel and the City to be equal to or greater than seventy-five thousand dollars (\$75,000) in the fiscal year.

29.12. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Counsel may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Counsel agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Counsel violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Counsel from bidding on or receiving any

new City contract for a period of two (2) years. The Controller will not consider Contractor's/Counsel's use of profit as a violation of this section.

29.13. Protection of Private Information

Counsel has read and agrees to the terms set forth in the San Francisco Administrative Code (Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Counsel agrees that any failure of Counsel to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Counsel pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Counsel.

29.14 Food Service Waste Reduction Requirements

Effective June 1, 2007, Counsel agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Counsel agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Counsel agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Counsel's failure to comply with this provision.

29.15 Interpretation of Agreement

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

DENNIS J. HERRERA
City Attorney

COUNSEL

[Name of Firm],
a _____

By: _____
[Insert name]

Federal Employer Number

***Please note agreements for Professional Legal Services may only be signed by the City Attorney or Chief of Staff, Chief Counsel, or Chief of Litigation.**

EXHIBIT B

Fee and Expense Schedule

The City agrees to compensate [Consultant/Counsel] under this Agreement in the amount and manner set forth below:

A. [Consultant/Counsel] shall be paid for professional services at the hourly rates indicated below. [Consultant/Counsel] agrees that its hourly rates will not be increased during the term of this Agreement. [Consultant/Counsel] shall use efficient and cost effective means in rendering services as set forth in section 7.2 of the contract. In no event shall [Consultant/Counsel] bill, nor shall the City pay, more than the amount certified by the City. Charges for preparing, processing or reviewing bills are not reimbursable under this Agreement.

[State any assumptions underlying the determination of the total maximum fee and expense amount, as appropriate and as negotiated]

[Consultant's/Counsel's] hourly rates as of [Insert date] are:

[Name of Attorney(s)] [Hourly fee amount in numbers]

B. In addition to the charges for professional services set forth in Paragraph A above, City shall reimburse [Consultant/Counsel] for its reasonable and necessary actual out-of-pocket expenses incurred in the course of rendering such services, consisting only of costs of toll telephone calls, document binding, filing fees, express mail, delivery charges and courier service, in-house photocopying, charges for sending facsimiles (facsimile costs and in-house photocopying shall not exceed \$0.10 per page; outside reproduction at actual cost). The amount of out-of-pocket expenses that the City shall reimburse under this Agreement shall not exceed [Amount in words]\$_____ [Amount in numbers]. [Consultant/Counsel] shall use cost effective means in incurring any permitted reimbursable cost. No markup or surcharge shall be added. Any single out-of-pocket expenditure in excess of [Amount in words](\$_____ [Amount in numbers]) and any expenses for travel outside the City are subject to the prior written approval of the City and shall be paid for directly, or in advance to [Consultant/Counsel].

C. The following expenses are not chargeable to the City: **[Examples of non-reimbursable expenses)**

1. *time spent in travel from Counsel's _____ office to San Francisco;*
2. *automobile rental fees incurred to attend meetings;*
3. *taxicab fares incurred from Counsel's respective offices to an employee's place of residence;*
4. *parking expenses incurred by an employee who takes his/her vehicle to work in order to attend meetings;*
5. *meals for working overtime;*
6. *secretarial overtime;*
7. *cost of receiving facsimiles; and*
8. *cost of e-mails for transmission of documents.*

EXHIBIT A

[ENGAGEMENT LETTER OR SCOPE OF SERVICES - See §1.1]

APPENDIX B

Required Vendor Forms

Required Vendor Forms

Office of Contract Administration - All required Forms are available at <http://sfgsa.org/index.aspx?page=4762> under the “How to Qualify to do Business with the City” tab.

All vendors must fill out the first three forms before the City can do business with them.

1. P-25 - Business Tax Declaration
2. IRS Form W-9 - Request for Taxpayer Identification Number
3. HRC Form 12B-101 San Francisco Code Chapters 12B and 12C Declaration

P-25 – Business Tax Declaration

The City uses this form to determine if vendors must register with the Tax Collector, and if so, whether they have. All vendors must sign this form, even if they are not located in San Francisco. Please download this form, sign it, and mail it either to Purchasing or to another City department you are dealing with. Purchasing's address is: City Hall, Room 430, San Francisco 94102-4685
Form P-25 - Business Tax Declaration ([Word](#)) ([PDF](#)) [[pdf help](#)]

IRS Form W-9 - Request for Taxpayer Identification Number and Certification

The City needs each vendor's taxpayer ID number, and if we don't already have it, we need you to submit this form to us. If you've already done business with the City before, don't fill out this form because we already have your taxpayer ID number.

We will do our best to make sure the edition we post is current, but we cannot guarantee it. You may want to check the IRS's website at: www.irs.gov/pub/irs-pdf/fw9.pdf. Attached is the IRS form with instructions for filling out the form.

[IRS Form W-9 - Request for Taxpayer Identification Number \(PDF\)](#) [[pdf help](#)]

HRC 12B-101 SF Admin Code Chapters 12B and 12 C Declaration

The link below goes to the HRC website. Please use your back button to return to Purchasing. You must complete form HRC-12B-101, and you might have to complete other forms depending on your company's particular situation.

[HRC 12B Forms - HRC Website](#)